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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION APPLICATION NO. 169 OF 2004

M/s. Shah Construction Company Ltd.

.. Applicants

Vs.

M/s. Vitesse Limited.

.. Respodents

Mr. Birendra Saraf i/b R.R. Mishra for Applicants.

Mr. Milin Sathe with Mr. M.S. Doctor i/b Bachubhai
Munim & Co. for Respondents.

CORAM : B. H. MARLAPALLE,J.

Date : February 10, 2006.

P.C.:

1. Heard the learned counsel for the respective parties. This is an application praying for an appointment of sole Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996. The prayer is based on the terms of agreement dated 18/11/1983 and undoubtedly it was an agreement for leave and license in respect of commercial premises. Clause 14 of the said agreement provides that all disputes whatsoever which shall arise between the parties hereto as to the construction or application of any clause or thing herein contained or as to any act deed matter or thing or omission of any of the parties hereto or as to any other matter in any way relating to these presents of the rights and duties of

the parties under these presents shall be referred to a single Arbitrator in case the parties agree upon one, otherwise to two Arbitrators one to be appointed by each party to the dispute and such arbitration shall be held in accordance with and subject to the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof for the time being in force.

2. The respondent-company has filed an affidavit-in-reply and opposed the application as not maintainable for the reasons that (a) the dispute sought to be referred to the arbitration is required to be adjudicated upon by the Small Causes Court under Section 41 of the Presidency Small Cause Courts Act, 1882 and (b) the court of Small Causes has been excluded from the definition of the term "Court" under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. The objection of the respondents to this application is supported by a three Judge Bench decision in the case of Natraj Studios (P) Ltd. vs. Navrang Studio and anr. reported in **(1981) 1 SCC 523**, whereas the learned counsel for the applicants-company relies upon a Division Bench decision of this court in the case of Vijaya Bank vs. Maker Development Services Pvt. Limited reported in **2001 (3) Bom. C.R. 652**.

3. In this application itself the issue sought to be referred for arbitration is framed as follows:-

(a) Whether the Applicants are entitled to receive vacant possession of the subject premises/ compensation/damages for unauthorised use of the premises after revocation of the license/mesne profits passed in future/appropriate orders for mandatory and prohibitory injunction and cost of proposed Arbitration proceedings from the Respondents?

. Undoubtedly, the disputes sought to be referred to the Arbitrator squarely fall within the ambit of subsection 1 of Section 41 of the Presidency Small Cause Courts Act, 1882 and the learned counsel for the respondents is right in relying upon the decision in the case of Natraj Studios (P) Ltd. (Supra). The reliance of the learned counsel for the applicants on the decision of this court in the case of Vijaya Bank (Supra) is misplaced. In Vijaya Bank's case the disputes referred to the Arbitrator read as under:

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(a) What is the relevant date of exercise of option by the plaintiffs for enforcing the agreement to sell the suit premises (as more particularly set out in the schedule hereunder written) to the defendants? and

(b) The learned Arbitrator shall determine the market value of the suit premises as on the date of exercise of option (to be determined under Clause (a) supra) and for which purposes he shall be entitled to take such assistance as he deems fit and proper."

4. The Division Bench of this court in Vijaya

Bank's case held that the ratio laid down in Natraj Studios (P) Ltd.'s case (Supra) was not applicable in that case and the reasons set out by Their Lordships are in para 37, which read as under:-

"In any event, the real dispute between the parties, which the arbitrator had to arbitrate upon, was not whether the respondent was entitled to licence compensation. This is obvious from the fact that the stand of both the parties before the arbitrator was that the licence had come to an end on 31-3-1998. Both the parties, however, differed on the

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consequence of what should transpire after
31-3-1998 on account of the conduct of the
parties. In our judgment, therefore, this was
not a dispute which would fall within the
province of section 41 of the Presidency Small
Causes Act, 1882. This was very much a
dispute within the province of the Civil Court
which the parties were entitled to submit to
Arbitration, which they did."

5. On the second count there is not much dispute

between the parties and undoubtedly the Small Causes
Court which has the exclusive jurisdiction to
entertain and adjudicate upon the dispute sought to be
referred between the parties would not fall within the
ambit of the term "Court" as defined under the
Arbitration and Conciliation Act, 1996.

6. The application is, therefore, rejected as not
maintainable.

(B.H. Marlapalle, J.)